

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 ADONNA FROMETA,

PLAINTIFF,

5  
6 -against-

Index Case No:  
07CIV6372

7  
8 MARIO E. DIAZ-DIAZ, ALL AMERICAN HAULERS  
9 RECYCLING,

DEFENDANTS.

10 -----X  
11  
12 DATE: January 11, 2007  
13 TIME: 5:10 P.M.  
14  
15

16 CONTINUED EXAMINATION BEFORE TRIAL of  
17 the Defendant, MARIO E. DIAZ-DIAZ, taken by the  
18 Plaintiff, pursuant to an Order, held at the  
19 office of Wilson, Elser, Moskowitz, Edelman &  
20 Dicker LLP, 150 East 42nd Street, 23rd Floor  
21 New York, New York 10017 before Lorraine  
22 DeSalvio, a Shorthand Reporter and Notary  
23 Public of the State of New York.  
24  
25

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Page 114

1  
2 APPEARANCES:3  
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6 New York, New York 10004

BY: SLAWEK W. PLATTA, ESQ.

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8  
9 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP

10 Attorneys for the Defendants

11 150 East 42nd Street

New York, New York 10017

BY: JOHN A. HSU, ESQ.

12  
13 ALSO PRESENT

14 ABLE DOCE-SPANISH INTERPRETER

15 \* \* \*

1

2 MARIO E. DIAZ-DIAZ, called as a  
3 witness, having been first duly sworn by a  
4 Notary Public of the State of New York, was  
5 examined and testified (through the Spanish  
6 interpreter) as follows:

7 EXAMINATION BY

8 MR. PLATTA:

9 Q. Please state your name for the  
10 record.

11 A. Mario E. Diaz-Diaz.

12 Q. Where do you reside?

13 A. 91 Sprint Street, Apartment 1,  
14 Passey, New Jersey 07055.15 MR. HSU: This is a continuation  
16 from of the deposition of Mario  
17 Diaz-Diaz as from December 4, 2007.18 MR. PLATTA: And let the record  
19 reflect that this deposition was  
20 supposed to start at 4:00, it is now  
21 5:10 and this is due to the defendant.  
22 Plaintiff's counsel and the translator  
23 and ma'am court reporter were present  
24 all the time as well as defense counsel.

25 Q. Mr. Diaz-Diaz, good afternoon. How

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## 2 FEDERAL STIPULATIONS

## 3 IT IS HEREBY STIPULATED AND AGREED

4 By and between the counsel for the respective  
5 parties hereto, that the filing, sealing, and  
6 certification of the within deposition shall  
7 Be and the same are hereby waived;  
8

## 9 IT IS FURTHER STIPULATED AND AGREED

10 That all objections, except as to the form  
11 Of the question, shall be reserved to the times  
12 Of the trial.

## 13 IT IS FURTHER STIPULATED AND AGREED

14 That the within deposition may be signed before  
15 Any Notary Public with the same force and  
16 effect

17 As if signed and sworn to before this court.

18 \* \* \* \*

1

M. DIAZ-DIAZ

2 are you today?

3 A. A little tired.

4 Q. I will repeat what I said during  
5 the very beginning of the first deposition.  
6 I'll be asking you some questions about the  
7 accident that happened on February 14, 2007 and  
8 I'll ask you to keep your responses verbal, and  
9 please remember also that nods of your head  
10 will not be recorded by the court reporter.

11 A. Okay.

12 Q. And if you don't understand a  
13 question I ask you, tell me and I'll rephrase  
14 the question.

15 A. Okay, very well.

16 Q. If you need to take a break, you  
17 may do so, however, I ask that you respond to  
18 the question first.

19 A. Okay.

20 Q. And also, if I don't hear you  
21 saying you don't understand something, my  
22 understanding is that you understood the  
23 question and responded truthfully and  
24 adequately to every question asked.

25 A. Yes.

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24 all the time as well as defense counsel.

25 Q. Mr. Diaz-Diaz, good afternoon. How

1 M. DIAZ-DIAZ  
2 are you today?

3 A. A little tired.

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5 the very beginning of the first deposition.  
6 I'll be asking you some questions about the  
7 accident that happened on February 14, 2007 and  
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11 A. Okay.

12 Q. And if you don't understand a  
13 question I ask you, tell me and I'll rephrase  
14 the question.

15 A. Okay, very well.

16 Q. If you need to take a break, you  
17 may do so, however, I ask that you respond to  
18 the question first.

19 A. Okay.

20 Q. And also, if I don't hear you  
21 saying you don't understand something, my  
22 understanding is that you understood the  
23 question and responded truthfully and  
24 adequately to every question asked.

25 A. Yes.

2 (Pages 112 to 115)

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M. DIAZ-DIAZ

Q. Sir, previously we had marked Plaintiff's Exhibit 1, a police accident report. I'll ask that you have a look at that with permission of your counsel. When you are done looking at it, let us know.

MR. HSU: Don't say anything, just look at it and when you are done, tell us that you are done, okay.

A. Sir, did you ever see this document before that was marked as Plaintiff's Exhibit 1?

A. This document?

Q. Yes.

MR. HSU: Yes or no.

A. This is a report from the police.

Q. That's correct. Have you seen this document before?

A. Yes, I've seen it.

Q. When did you see it?

A. The company who did the service asked me to go get it.

Q. What is the company that you just referred to?

A. All American Haulers.

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Q. Did you see this police report at their office?

MR. HSU: Objection. He just said they asked him to go get a copy of the police report from the police station so.

Q. Sir, when was the first time that you saw this police report?

A. One or two weeks afterwards.

Q. At what location was it?

A. I don't recall right now, I don't recall exactly right now, but I know where it is.

Q. Was it at the police precinct?

A. Yes.

Q. Did you see the police officer who was preparing this police report?

MR. HSU: At the time that he picked up the report?

MR. PLATTA: No. At the time that the report was prepared.

MR. HSU: You are assuming it was prepared in his presence.

Q. Did you see him prepare it?

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M. DIAZ-DIAZ

MR. PLATTA: Counsel, if you have objection, state it.

MR. HSU: I'm going to object because the question doesn't make sense.

A. No, I didn't see him. No, I didn't see it.

Q. Did you draw any kind of diagram for the police officer at the scene of the accident?

A. No, sir.

Q. What was the sum and substance of the conversation, if any, that you had with the police officer at the scene of the accident?

A. I didn't speak with the police officer.

Q. Who did you speak to at the scene of the accident besides my client that you already testified to?

A. There was a lady, as I said before, in the ambulance there was a lady in the ambulance that spoke Spanish.

Q. What was the sum and substance of the conversation that you had with her?

A. She came over to me because I was

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at my truck and the police officer told me to go up to the truck. She was smoking, she was smoking and I asked, how is the lady I asked, and she told me that she is fine.

Q. Did you speak to anyone else?

A. No, sir.

Q. How long did you stay at the scene of the accident afterwards?

A. How long?

Q. Yes.

A. It was a little bit more than an hour until the police officer told me that I could go, I didn't leave.

Q. Okay, how did you leave the scene of the accident?

A. In my truck.

Q. Did you continue on your route to work that night or something else?

A. I continued in my job, in my work.

Q. How long did you work that night?

A. Well, that the hour until 12:00 in the afternoon.

Q. When was the first time that you reported this accident to your office?

3 (Pages 116 to 119)



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A. It was something around 9:00 in the morning that the offices were open already.

Q. And that was the first time that you had reported the accident to your superiors?

A. Yes.

Q. Do you remember what you told them?

A. Yes, I told them that I had an accident.

Q. Anything else?

A. I only told them that I had an accident and nothing else.

Q. What was the name of the person that you spoke with?

A. There was a lady there who spoke Spanish her name was Denarius and I spoke to her in order for her to communicate with the other people.

Q. Do you know who are the other people at the company?

A. I don't know them personally, I just know that there is a person called Tony and that I have to speak to him about the accident.

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Q. Did you speak to Tony as well?

A. No.

Q. Was Denarius a translator?

MR. HSU: Objection to that question. He didn't say that. She worked in his employment and she just helped translate for him.

MR. PLATTA: Right, I'm asking if she was a translator.

MR. HSU: Like a professional translator. Ask her what she did there.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record.

A. Denarius speaks Spanish.

Q. Is she a professional translator at your office?

A. She is simply an employee that worked there and speaks Spanish, and I told her that I had an accident, she communicated to the people in the office.

Q. Is there any kind of procedure that you have to follow when an accident happens and it involves your truck at your company?

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MR. HSU: Note my objection to form.

A. Repeat the question.

MR. PLATTA: Read it back.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

A. Yes, they instruct us that when we have an accident only to call, that's it.

Q. Do you know the number to call?

A. No, no, I had a radio.

Q. Is it like a CB radio?

A. Yes.

Q. Did you call to report this accident using the CB radio at night?

A. No. At 9:00 in the morning I called.

Q. Did you report this accident to anyone between the time when it happened more or less at 4:30 a.m. and 9:00 a.m.?

MR. HSU: Besides the police that took a report?

MR. PLATTA: He didn't take a report.

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MR. HSU: It didn't mean they didn't report it, you didn't ask if he it provided them.

MR. PLATTA: I'm asking about anyone including the police.

A. What?

Q. Did you report that you had an accident to anyone between 4:30 a.m. and 9:00 a.m.?

A. Only the person who I said.

Q. Who is that?

A. As I said before, I called Denarius in order for her to tell the other people and in order for her to tell the owners or officers of the company.

Q. I understand. That was at 9:00, correct?

A. It's around there because the offices don't open exactly at this time that you report to work.

Q. My question is: Did you speak to anyone else between 4:30 a.m. and 9:00 a.m. besides this person?

A. No, no.

4 (Pages 120 to 123)

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Q. Did you call your wife?

A. No. I told her when I arrived.

Q. What did you tell her?

A. I told her that I had an accident and I explained more or less, I told her that I had an accident.

Q. What time did you tell her that?

A. I don't remember, I don't recall.

Q. Was it in the morning or afternoon?

A. I don't recall exactly because at that time she was working in the morning.

Q. Sir, did you use your CB radio at any time between the moment when you got into your truck on February 14th and the moment of the accident?

A. No, no, I didn't use it, no.

Q. Was it on during that time?

A. Are you asking me if it was turned on?

Q. Yes.

A. Yes, yes, when someone gets in you turn it on.

Q. Were you able to hear other drivers speaking on the radio?

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A. No.

MR. HSU: I'm objecting to the form because it assumes that there were other drivers. Was anyone speaking on the radio while you were driving your car?

Q. Was there anyone else speaking on the radio at the time that you got to the truck and the moment of the accident?

A. No, at the time in the wee hours of the morning there are only two trucks that go into work, the other trucks are not working at that time.

Q. What is the procedure for using the CB radio in other words, when did you use it?

A. It's only used when we go to the clients and then they call the company and the company calls us to let us know if there was any service that we didn't provide or if there was anything left behind or if there was a stop that we didn't make.

Q. Did you have a regular radio inside the truck at the time of the accident?

A. Yes.

Q. Was it on?

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MR. HSU: At what point?

MR. PLATTA: At any time before the accident.

A. Yes. From the moment that you enter the office you removed it from the charger and you put it into the truck and you turn it on.

Q. Are you referring to the CB radio?

A. What is a CB?

Q. How did you call the radio where you contact the base?

A. Walkie-talkie.

Q. Were you referring to the walkie-talkie?

A. It's like a regular radio like those phones that sound.

Q. My question is, did you have a radio with music stations in your truck at the time of the accident?

A. No, no. That truck did not have a radio.

Q. During the last deposition we spoke a little bit about snow tires and snow chains; can you tell me if you remember if your car had

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snow tires at the time of the accident?

MR. HSU: Objection. This was already asked and answered. You asked, "Do you know when the last time that the tires on your truck were changed and answer was: "No, I don't remember".

Then you asked, "Can you tell me on the day of the accident, did you check the depth of the treads of the tires on your truck before you starting driving on the night of the accident, February 14th"?

MR. PLATTA: Counselor, I know what I said. I'm asking about snow tires we didn't even talk about it.

MR. HSU: Read back the last question.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

A. Of the last time I told you, no.

Q. No, you didn't have?

A. It did not have chains.

Q. I'm asking you about snow tires?

MR. HSU: Do you know if the truck

5 (Pages 124 to 127)

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had snow tires on it at the time of the accident?

THE WITNESS: No, no.

Q. No, it didn't have or no, you don't know if it had?

A. It did not have them.

Q. Was it a procedure at your company at the time of the accident describing when you had to put snow tires on the truck?

A. I don't put tires on.

Q. I understand that you don't. My question is, do you know if there was a procedure saying exactly when you do have to put snow tires on the truck, not just for you but for anyone?

MR. HSU: If anyone.

A. I don't know if they had that procedure.

Q. Same question about snow chains. Do you know if there were a procedure that has to be followed as to when you are obligated to drive your truck with snow chains on it?

MR. HSU: Note my objection to form.

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A. I don't know if they have that procedure there.

Q. Did anyone at All American Haulers ever tell you at certain times you had to put snow chains on your truck?

MR. HSU: You are referring to before the accident?

MR. PLATTA: At any time. At any time before or after, yes.

A. No. They have never told me anything.

Q. And sir, before you testified that you checked the brakes in your truck, my question is, how did you check that?

MR. HSU: Objection to the form, in which are you characterizing his testimony, it speaks for itself.

Q. Sir, did you check the brakes in your truck on the night of the accident?

MR. HSU: Before the accident, right?

MR. PLATTA: Yes.

A. As I said before, when you get into the truck, you check the tires, you check the

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oil in the truck and as you are driving along you check the brakes on the truck to see if the brakes are working after you take off from the shop.

Q. My question is: What did you do that night to check the brakes?

MR. HSU: Asked and answered, don't answer.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record.

Q. Again, what did you do that night to check the brakes on your vehicle?

A. All the drivers before they turn on their vehicles they check the fluids in the car, they check the lights, they check the tires. Again, another thing that we do is when you get into the truck we have to check the gauge to see if the air pressure on the brakes goes up to 120 pounds, if it goes up to 120 pounds you know there is something wrong with the brakes.

Q. That particular night, February 14, 2007, what did you do to check the truck, to

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check the brakes?

A. I came from New Jersey with the brakes and they were working, I pumped them.

MR. HSU: Off the record.

[Discussion held off the record.]

MR. HSU: Back on the record.

Q. Sir, when you said that you pumped the brakes, what was the reason for to you pump the brakes?

A. When you pump the brakes when you get up to 120 you pump the brakes in order to get the pressure up. Sometimes it's at 90 so you pump them to get them up to 120.

Q. Can you tell me when you did that night?

A. Before I left. Before you leave you have you to do it.

Q. At the time of the accident, can you tell me what was your brake pressure?

MR. HSU: Note my objection to form.

A. I couldn't tell you no, I could not tell you.

Q. And when you pumped the brakes,



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1 what was the air pressure?

2 A. I pumped the brakes in the yard.

3 Q. I understand. What was the brake  
4 pressure at the time?5 A. At that moment it was 120. Another  
6 method that you use is that you press the brake  
7 peddle for one minute.8 Q. Did you check the brake pressure at  
9 any time from the moment that you left the yard  
10 until the moment of the accident besides the  
11 moment that you just described?

12 A. That procedure is done in the yard.

13 Q. My question is; did you observe the  
14 pressure of your brakes at any time before the  
15 moment between the moment when you left the  
16 yard until the moment of the impact?17 MR. HSU: Note my objection. It  
18 assumes that he could see the pressure  
19 on some gauge while he is driving the  
20 vehicle.21 MR. PLATTA: I'll rephrase the  
22 question.23 Q. Sir, how do you observe the  
24 pressure of the brakes?  
25

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M. DIAZ-DIAZ

1 MR. HSU: I'm going to allow this  
2 one more time. It was asked and  
3 answered.4 MR. PLATTA: Counsel, let him  
5 answer it one more time.6 MR. HSU: That's it. You are going  
7 in circles.8 A. That procedure is done in the yard  
9 because if the brakes are bad then you can't  
10 leave.11 Q. My question is: Is there any type  
12 of equipment that shows you the pressure of the  
13 brakes inside of the vehicle that you can see  
14 while you are driving?

15 A. No verbal response.

16 MR. PLATTA: Repeat the question,  
17 read it back.18 [Whereupon, the requested portion  
19 of the record was read back by the Court  
20 Reporter.]21 A. Yes, there is a piece of equipment  
22 there, I don't remember the name, but it tells  
23 you what the pressure is of the brakes as you  
24 are driving the vehicle.  
25

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M. DIAZ-DIAZ

1 Q. Now my question again; did you look  
2 at this equipment that shows the pressure of  
3 your brakes at any time from the moment when  
4 you left the yard until the moment of the  
5 accident?  
6

7 A. Read back the question.

8 [Whereupon, the requested portion  
9 of the record was read back by the Court  
10 Reporter.]11 Q. As one has the opportunity, one  
12 looks at the dashboard because one depends on  
13 that, there is the oil pressure dial, there is  
14 brake pressure dial, there is also the  
15 equipment that shows you how fast the car is  
16 moving, it's all on the dashboard and you have  
17 to look at that?18 MR. PLATTA: Move to strike as  
19 nonresponsive.20 Q. What I'm interested in, did you  
21 physically look at the piece of equipment that  
22 shows the pressure of the brakes at any time  
23 between the time-out that you left the yard and  
24 the moment of the accident?

25 A. You always have to observe it.

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1 Q. I don't understand, does that mean  
2 that you looked at it?

3 MR. HSU: Yes or no.

4 A. Clearly, I looked at it, yes.

5 Q. How many times?

6 A. I don't recall, I don't remember.

7 Q. More than 10?

8 MR. HSU: He just said he didn't  
9 recall.

10 MR. PLATTA: Can he estimate.

11 MR. HSU: Can you estimate how many  
12 times you might have looked at it, can  
13 you estimate, yes or no.

14 A. No, I can't estimate.

15 Q. When was the last time before the  
16 accident you looked at the pressure of your  
17 brakes?

18 A. I don't recall, I don't remember.

19 Q. Was it more than 10 minutes before  
20 the accident?

21 A. I don't recall exactly.

22 Q. More than 30 minutes?

23 MR. HSU: Asked and answered. He  
24 didn't recall.  
25

7 (Pages 132 to 135)

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A. I don't know exactly.

Q. Sir, when was the last time that your driver's license, Class A was renewed?

A. Renewed?

Q. Yes.

A. May I check it?

MR. PLATTA: Yes, with permission of counsel.

MR. HSU: No. If you remember, all from your memory.

A. One second, I believe it's renewed until 2011.

Q. When was the last time it was renewed before today?

A. Exactly, I don't recall, but in the beginning of the year I had to renew it because it was going to expire.

Q. In 2007 or 2008?

A. In 2007.

Q. Is it fair to say that you renewed the driver's license before the accident happened?

A. Yes.

MR. HSU: Objection to the form.

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You can answer.

A. Before, I don't recall if it was before or after. I don't recall, I don't remember.

Q. Do you remember where you renewed your driver's license?

A. The motor vehicle out there in Lodi, New Jersey.

Q. At that time, did you have to undergo any type of an eye test?

A. Not exactly because my medical card were current, the one that I had on me.

Q. Was your vision checked at the time when you had to renew your Class A driver's license in 2007?

A. I don't recall if they checked my eyesight, I believe it wasn't necessary.

Q. Do you remember when was the prior time when had you to renew your driver's license prior to 2007?

A. Yes, because I have to do my fingerprints for hazardous material.

Q. So when was it?

A. I don't recall exactly when it was

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but it was in the beginning of the year.

Q. Which year?

A. Last year, March or April.

Q. 2007 or 2006?

A. 2007.

Q. Prior to that?

MR. HSU: Objection, there was a line of questioning regarding his eyesight and eye examination already okay.

MR. PLATTA: Yes.

MR. HSU: When was the first time that you received a Jersey license prior to the date your eye vision checked.

THE WITNESS: No, I didn't have any problems. When you go to the Department to Motor Vehicles first thing that you have is a check.

MR. HSU: This was already asked and answered. Are you asking him a new question?

MR. PLATTA: Yes.

Q. When was the prior time prior to 2007 when you had to renew your Class A

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license?

MR. HSU: You asked about in '99 when you checked.

MR. PLATTA: I'm asking about the Class A.

MR. HSU: That's not the testimony.

Q. Is Class A a driver's license, it seems to say that.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record.

Q. When was the last time prior to 2007 that you had to renew your Class A driver's license?

MR. HSU: Before you answer. Let the record reflect we have not had an opportunity, my client has not had an opportunity to review his earlier testimony. A transcript was provided to me today, January 14, 2008 from the December 4th deposition so this question is asked and answered but we're going to allow you to answer for this final time, if you know the answer.

8 (Pages 136 to 139)

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Q. When was the last time that you renewed it?

A. It was March or April of last year.

Q. Last year, meaning 2006 or 2007?

MR. HSU: This is 2008 so last year would be 2007.

A. 2007.

Q. And my question was, prior to that time, when did you renew your driver's license, Class A?

A. I have a procedure that I have to follow. I took out my driver's license in 1999, in that procedure I am changing from D to A and you renew it every four years.

Q. Again, when was the last time before 2007 that you renewed your driver's license, Class A?

MR. HSU: He just answered. He got it in '99 and he answered it's every four years.

Q. Did you renew the license in 2003 four years after you got it in 1999 and again four years later in 2007?

A. I don't have the exact dates.

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Q. How many times did you all together renew your Class A driver's license?

A. I renewed it last year.

Q. And was it the only time when you renewed it?

MR. HSU: How many times have you renewed Class A since you first got it in total?

THE WITNESS: One time.

Q. To operate the truck that you were operating on the date of the accident, did you have to have a Class A driver's license?

THE WITNESS: Yes.

Q. Sir, when you first got a prescription for your glasses, was this prescription only for reading?

MR. HSU: Asked and answered. This has all been gone over. You are not attempting go back to this.

MR. PLATTA: Strike it.

Q. Sir, since when do you have the restrictions on your driver's license for wearing glasses?

MR. HSU: Objection. Don't answer

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yet, I think that was asked and answered already.

MR. PLATTA: Read back the question.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

Q. I want to know since when?

MR. HSU: This is scary. Explain to him that he already testified and then he will have the opportunity to read it. Come outside and read the testimony otherwise you give him the questions and his answers on the record, what he already testified to.

MR. PLATTA: Let me ask you something else. Did you actually testify since when he had the restrictions on the driver's license?

MR. HSU: He testified that he had the restrictions on the date of the accident and he got the license in 1999.

Q. Sir, did you have restrictions on your driver's license in 1999 to wear glasses?

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M. DIAZ-DIAZ

A. They didn't give me a restriction. How do I tell you, I needed glasses to read and then with time I've had to go and fix them.

MR. HSU: When was first time that you had a restriction put on your license that you had to wear glasses, when was the first time, the first year? His Answer was: That is when I did the road test.

Q. What year is that, approximately?

A. I can't recall, I don't remember.

MR. HSU: Before 2007?

THE WITNESS: Yes, it was before.

Q. Before this accident?

A. Yes, it was before.

Q. Can you tell me if this was in 2000?

A. I don't have eight years with that driver's license, I don't have eight years with a CDL Class A driver's license.

Q. How many years do you have with a CDL?

MR. HSU: Hold on one second.

A. I don't recall now.

9 (Pages 140 to 143)

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M. DIAZ-DIAZ

Q. Sir, did you have a restriction on your Class A driver's license in 2005?

MR. HSU: Note my objection.

A. Yes.

Q. What about in 2004?

A. I don't have an exact recollection of when it was. As I said before, previously I gave you the procedure of how it was that I went about getting this license.

Q. I appreciate that. Do you have anything at home that would indicate the year or month when you started having restrictions on your driver's license?

MR. HSU: Yes or no?

A. Yes, I believe that I have it yes, I would have to look for it.

MR. PLATTA: I'll call for the production of these records and put it in writing.

MR. HSU: As far as I recollect, the accident wasn't in 2000, it was 2007 and he said that he was wearing glasses at that time.

Q. Sir, did you have in 2007 a valid

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M. DIAZ-DIAZ

at the same time have a restriction on your Class A driver's license for wearing glasses and you wouldn't have it on a Class D driver's license?

A. Class D, no, no, there is no reason.

Q. Okay.

MR. HSU: If you know.

A. May I say the reason?

Q. Yes, sure.

A. When I had the Class C, now I'm remembering. I used to make deliveries for a company and I had to read maps and I couldn't read the letters on the map very well.

MR. HSU: He's not asking you for your life story. Do you know why there is a difference for different classes D and A. Do you know why one has a restriction or no, you do you know why and if you do know, tell him why.

A. Yes, there is a difference. Class D yes, because Class D is to drive regular four-door cars and the Class A is to drive trucks.

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M. DIAZ-DIAZ

driver's license Class B?

MR. HSU: I'm objecting. What is a Class B driver's license?

A. I've never had a Class B, only Class A, CDL.

MR. HSU: Are you withdrawing the last question?

MR. PLATTA: I'm withdrawing the last question.

Q. Did you have a restriction your driver's license, Class D at the time of the accident?

A. No, and on my Class D I didn't have any restrictions.

Q. Is there any reason why at the same time that you would have restrictions on your Class A license and not have a restriction on your Class D license?

MR. HSU: If you know.

A. Is there a reason?

Q. Yes.

A. If there a reason please tell me the question again.

Q. Is there any reason that you would

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M. DIAZ-DIAZ

Q. When you were talking about Class C, did you have a valid driver's license Class C at the time of the accident in 2007?

A. Class A.

Q. Class C?

A. No, it wasn't valid.

Q. When did it expire?

MR. HSU: What does it matter? He didn't need a Class C to drive. If it was expired, it has no relevance in the case at hand. That's like asking for a pilot license. He didn't need to have one at the time of the accident.

MR. PLATTA: His eye condition is an issue here.

MR. HSU: You think it's an issue but it's not an issue.

MR. PLATTA: I'll have to file a motion.

MR. HSU: You will have to make a motion. You can try to make it an issue but it ain't an issue, trust me.

MR. PLATTA: Off the record.

[Discussion held off the record.]

10 (Pages 144 to 147)



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MR. PLATTA: Back on the record.

MR. HSU: Do you have a Class C driver's license?

MR. PLATTA: On the date of the accident.

A. In 2007?

MR. HSU: No. Ever, did you have a Class C license?

THE WITNESS: I had a Class C.

MR. HSU: But it expired.

A. You can't have two licenses, you can't have two passports, you can only have one.

Q. Fine.

A. Only one, you can only have one, when you changed from Class C to Class A they disqualify it and they punch it.

Q. Did the Class C driver's license have any restrictions?

A. No, it didn't have any restrictions.

Q. Do you know when it expired?

MR. HSU: Note my objection. He didn't say expired, he said that they

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they punched it.

A. I never, it never expired. When I got my Class A license my Class C license was turned over.

MR. HSU: It was terminated.

Q. When was it terminated?

A. They changed it, I don't recall right now.

Q. Do you remember who told you that you had to wear glasses, if anyone, while driving?

MR. HSU: Are you serious after we went through every doctor that he saw?

MR. PLATTA: I'm asking him about who told him.

MR. HSU: The eye doctor that said he has to wear it to drive.

MR. PLATTA: You have to stop or we'll bust the deposition, we can't do it.

MR. HSU: Bust it. Who cares, I can come back for another two days.

MR. PLATTA: He can't leave while a question is pending.

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MR. HSU: Answer the question.

A. When I was driving.

Q. Do you remember who told you that you have to wear glasses while driving for the first time?

MR. HSU: If anyone.

A. The authorities from the motor vehicle.

MR. PLATTA: John, that's what I was looking for.

MR. HSU: Obviously. Who do you think told him, Jesus Christ? You just asked him the same question. I'm trying to give you leeway on your stupid questions. You are asking him the same questions five different ways about if he has a restriction on his driver's license, so DMV told him and then you are asking who.

MR. PLATTA: You are using certain words that you shouldn't.

MR. HSU: It's ridiculous.

MR. PLATTA: It's on the record also.

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MR. HSU: I'm glad it's on the record, if anybody could actually read this, it's unbelievable.

MR. PLATTA: Can you tell, read back the last question.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

MR. HSU: Besides when he got his eye examined?

MR. PLATTA: Yes.

MR. HSU: When you got your eyes examined, did they tell you that you had to wear glasses?

MR. PLATTA: Counselor, I have a different question, please let me go forward unless he doesn't understand my question.

A. It was when I made the transition from C to A when I took the road test.

Q. Do you remember the year?

MR. HSU: He testified that he didn't recall it. Don't answer that again.

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MR. PLATTA: Note your objection. I don't think it's in the record.

MR. HSU: You don't think that you didn't ask when he changed it from the C to A. Do you know when you changed your license from C to A?

THE WITNESS: I don't recall exactly.

Q. More or less, can you estimate?

MR. HSU: If you are able, don't guess.

MR. PLATTA: All questions are what you can.

A. I can't, I can't, I don't have the exact date.

Q. Was it before 2000?

A. No.

Q. Was it before 2005?

A. Yes, it was before 2005, yes.

Q. At the time when you were told to wear glasses while driving, did you actually have any prescriptions filled out for your glasses?

MR. HSU: Are you now asking him

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about his prescription that he testified to?

MR. PLATTA: I'm asking if he had a prescription for glasses at the time and he was told by DMV that he had to wear glasses?

MR. HSU: He said it was before 2005, correct?

MR. PLATTA: Correct.

MR. HSU: And then we known his eye history before 2005. What am I missing?

MR. PLATTA: I'm missing an answer.

MR. HSU: What hadn't been asked if you actually know if you hadn't already asked it.

MR. PLATTA: John, if you have an objection.

MR. HSU: It's asked and answered.

MR. PLATTA: Take your time.

MR. HSU: Do you want to read his 20 pages about prescriptions? If you want to read his testimony, go ahead. Read back the last question. You are on a short leash.

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[Whereupon, the requested portion of the record was read back by the Court Reporter.]

A. When I took the road test.

Q. At the time that DMV told you that you had to wear glasses while driving, did you have a prescription for glasses already?

A. I already had my glasses.

Q. Okay. Do you remember at the time when the DMV told you to wear glasses, did they somehow measure your eye vision or anything about your eyes?

MR. HSU: He said that he had a DMV driver's license.

MR. PLATTA: I'm asking him whether he had to wear his glasses in 1999, that's not the same time.

MR. HSU: Are you kidding?

MR. PLATTA: No.

Q. He testified that he had an eye examine for DMV at the beginning of the year?

MR. HSU: And he continues to wear eyeglasses and you asked him, does he continue to get an eye examinations.

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This is like, I don't know, ask him the question.

MR. PLATTA: Repeat the question.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

A. As I said before, when you go to Department of Motor Vehicles, they ask you to look into this apparatus. At that time they did not tell me that I needed eyeglasses, I went to get eyeglasses on my own accord from the eye doctor.

Q. At the time that you went to DMV, did they check your eyes?

A. They didn't tell me because the time that I went, my eyesight was good.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. HSU: Read this please first. Off the record.

[Discussion held off the record.]

Q. Sir, when you testified before that the DMV told you that you had to wear glasses when you were driving, can you tell me at that

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moment, did they test your vision or how did they base their opinion, if you know?

A. At the time I don't recall very well. However, when I went to take the road test that restriction was already in my document and when they asked me to produce those documents, I didn't have them and I had to go back and get them.

Q. What documents?

A. It's the application for getting the driver's license.

Q. Do you have a copy of this application somewhere at home?

A. I doubt it, I believe not.

Q. Was it for a Class C, D or A driver's license?

A. That was for the road test of Class A license.

\* Q. Between 1999 when you first got your driver's license and 2007, did DMV check your eye vision at all?

MR. HSU: He testified that he had an eye examine when he got his driver's license.

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MR. PLATTA: I accept that.

MR. HSU: This is asked and answered. Don't answer that question. Next. Mark it for a ruling, it's asked and answered.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record.

Q. Sir, do you know what was the basis for DMV to give you a restriction on your driver's license?

A. That is part of the procedure when you go to fill out the forms for a driver's license.

MR. HSU: Read back the last question and answer.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

Q. Sir, you testified before that you didn't have any restrictions on your driver's license in 1999 when you first obtained it and then you got this restriction sometime afterwards?

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MR. HSU: Objection. Do you know what the reason was for this restriction?

A. That's part of the procedure when you are going to get your driver's license when you go to take your examine before they put that little camera to see if you are doing well, and that's where they deduce whether you need eyeglasses or not.

Q. Is this what happened in your case where they put the restriction on your driver's license?

MR. HSU: Objection to form.

A. In my first examination in 1999 it happened, but they didn't give me any restrictions.

Q. And then subsequently it changed?

MR. HSU: Subsequently what?

MR. PLATTA: He had another examine for a change of driver's license.

MR. HSU: He never testified he had another examine. He testified to change the license.

Q. At the time that you changed his

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license, did the condition change?

A. When I changed my driver's license to Class A yes, it changed.

Q. Was it the first time?

A. Yes.

Q. As a result of that at the time at DMV when you changed your driver's license to Class A, did you have to go to see any doctor for any new prescription for your glasses?

A. Yes, I went to a doctor for him to prescribe eyeglasses to me, but the Motor Vehicles did not send me. As I told you, I went by my own accord.

Q. You went on your own accord before the DMV test or before?

MR. HSU: He never said that he had a test.

MR. PLATTA: He said that he had a test during the course of his driver's license.

MR. HSU: When you renewed your driver's license, did you have a test for DMV?

A. With the Department of Motor

13 (Pages 156 to 159)

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Vehicle it was with the question of reading the maps.

Q. What about the moment that you said that you used the machine to check your eyes?

MR. HSU: He said that was in 1999 and they said that he didn't need glasses.

MR. PLATTA: Off the record.

[Discussion held off the record.]

Q. Sir, when you changed your driver's license from Class A, was it the first time when your eye test with DMV came back positive basically showing you that had you to wear glasses?

MR. HSU: Objection to form. He never testified to that.

Q. Did you have an eye exam when you changed your license to Class A?

A. No.

MR. HSU: No, for the fourth time in a row.

Q. So is it fair to say that the only time that you had this eye test was the only time at the very beginning when you had your

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doctor told me that I have to have examination for glaucoma and I didn't go back to her, I went to another doctor and spent \$400 in order for them to tell me that I didn't have glaucoma.

MR. HSU: If you read the transcript you would know that.

Q. Have you ever had any surgery done to your eyes?

A. No, sir.

Q. Have you ever been disciplined at your work at All American Haulers and Recycling?

A. Are you asking me if they called something to my attention, if they told me something?

Q. Yes.

A. No.

Q. Did you ever receive a reprimand for doing something wrong as a driver, any complaints?

MR. HSU: Objection to the form.

A. No.

Q. Did you wear glasses at the time of

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first driver's license from DMV?

A. It was my license for the first time that I did the examine the first time, yes.

Q. Was it the only time?

A. Afterwards they saw my eyeglasses on me and that's when they gave me the restriction.

Q. Fine.

MR. PLATTA: Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record.

Q. Sir, when was the first time that you were diagnosed with a glaucoma condition?

A. I told you and it's there. I don't recall right now, but I don't recall but I told you and it's in there.

Q. Fine. Do you remember at the time when DMV told you that you have to wear glasses, did you have this condition, did have you glaucoma?

MR. HSU: Object to the form.

A. I have never had glaucoma. I went to a doctor and when she told me and the first

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the accident?

MR. HSU: This was already asked and answered, you asked it.

MR. PLATTA: Believe me, I'm not trying to be. Off the record.

[Discussion held off the record.]

MR. PLATTA: Back on the record. Read back the last question.

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

A. Yes, surely.

Q. Was it the same glasses as have you today or not?

A. They are not the same glasses, no.

Q. As an employee of all American Haulers Recycling, did you receive a speeding ticket?

MR. HSU: Objection.

A. No.

Q. Were you issued any tickets for moving violations while working for All American Haulers?

MR. HSU: Note my objection,

14 (Pages 160 to 163)

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1 M. DIAZ-DIAZ  
 2 please.  
 3 A. No.  
 4 Q. Sir, I'm going to move to the  
 5 moment of the accident, and I'll only ask you  
 6 what you saw in a certain period of time.  
 7 MR. HSU: That's already all done.  
 8 It doesn't matter if it's not the same  
 9 question. It's the same questions asked  
 10 and answered. Why are you going back?  
 11 Off the record.  
 12 [Discussion held off the record.]  
 13 MR. HSU: Back on the record.  
 14 \* Q. Sir, within 10 seconds before the  
 15 accident, where did you look?  
 16 MR. HSU: Objection, answered.  
 17 Next question.  
 18 MR. PLATTA: Mark it for a ruling.  
 19 \* Q. Sir, five seconds before the  
 20 accident, where did you look?  
 21 MR. HSU: Asked and answered. Next  
 22 question.  
 23 MR. PLATTA: Mark it for a ruling.  
 24 John, you are buying yourself a motion  
 25 and it's not because of me.

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1 M. DIAZ-DIAZ  
 2 MR. HSU: You know, Slawek. Off the  
 3 record.  
 4 [Discussion held off the record.]  
 5 MR. HSU: Back on the record.  
 6 Q. Sir, what did you see in front of  
 7 you 20 seconds before the accident?  
 8 A. 20 seconds before?  
 9 Q. Yes.  
 10 MR. HSU: Don't answer that  
 11 question, answered.  
 12 Q. What did you see in front of you 10  
 13 seconds before the accident, what did you see  
 14 in front you 10 seconds before the accident?  
 15 A. The vehicle.  
 16 MR. PLATTA: Mark for a ruling the  
 17 other questions that were objected to.  
 18 Q. What kind of vehicle, the one that  
 19 had you the accident with?  
 20 A. A Toyota, Four by Four.  
 21 Q. At that time did you see anything  
 22 else?  
 23 A. No, only that.  
 24 Q. Five seconds before that, what did  
 25 you see in front of your truck?

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1 M. DIAZ-DIAZ  
 2 A. The same car.  
 3 Q. Anything else besides this car?  
 4 A. I was trying to avoid it in order  
 5 not to hit it.  
 6 Q. What were you doing to try to avoid  
 7 it?  
 8 MR. HSU: Note my objection.  
 9 Answered. Hurry up, answer.  
 10 A. I braked.  
 11 Q. Anything else?  
 12 A. To brake with everything that I  
 13 could.  
 14 Q. Anything else?  
 15 A. I don't recall anything else, I  
 16 only braked I don't recall now.  
 17 Q. Was your truck at the time of the  
 18 accident, equipped with a chromometer or  
 19 something that measures the time in your car?  
 20 A. That I recall, I don't know if  
 21 there are any trucks that have a chromometer  
 22 but if they have a computer it tells us when  
 23 the truck was turned on.  
 24 MR. HSU: Do you have one, just  
 25 answer. Your truck, do you know if you

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1 M. DIAZ-DIAZ  
 2 had one?  
 3 THE WITNESS: My truck does not  
 4 have a chromometer.  
 5 Q. Did you have any kind equipment  
 6 that measured the time or distance that you  
 7 traveled?  
 8 A. I believe not, but I don't know.  
 9 Q. Do you know who would know?  
 10 A. I don't know who would know. I  
 11 don't know.  
 12 Q. Do you know where the maintenance  
 13 records for this truck that was involved in the  
 14 accident, where are they maintained?  
 15 A. I told you the last time that I  
 16 didn't know.  
 17 Q. And I think my last question sir,  
 18 do you remember filling out a similar report,  
 19 like a police report it's called an MV-104?  
 20 MR. HSU: You asked about this.  
 21 This is where if he filled out an  
 22 incident report.  
 23 Q. Did you fill out a form that is  
 24 called an MV-104 it looks like a police report?  
 25 A. No, I didn't fill anything out like

15 (Pages 164 to 167)



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M. DIAZ-DIAZ

that.

Q. Sir, when you testified before about the doctor that you saw for glaucoma, did you see anyone else after you saw this doctor besides what you already testified in 2007, did you see any other doctors in between?

MR. HSU: For what, glaucoma?

MR. PLATTA: Any eye condition.

MR. HSU: Did you ever see a doctor for anything other than an eye condition?

THE WITNESS: No for another condition, no.

(Continued on the next page.)

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M. DIAZ-DIAZ

MR. PLATTA: I reserve my right for a further deposition of this witness. I deem this deposition incomplete due to the improper objections during this deposition.

(Whereupon, at 7:30 P.M., the Examination of this Witness was concluded.)

MARIO DIAZ-DIAZ

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2007.

NOTARY PUBLIC

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ERRATA SHEET  
CASE NAME: ADONNA FROMETA against MARIO E. DIAZ-DIAZ ALL AMERICAN HAULERS RECYCLING  
DATE OF DEPOSITION: January 11, 2008  
WITNESS' NAME: MAIRIO DIAZ-DIAZ

PAGE/LINE(S)/	CHANGE	REASON
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MARIO DIAZ-DIAZ  
SUBSCRIBED AND SWORN TO  
BEFORE ME THIS \_\_\_\_ DAY  
OF \_\_\_\_\_, 2008.

NOTARY PUBLIC

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INFORMATION AND/OR DOCUMENTS REQUESTED  
INFORMATION AND/OR DOCUMENTS PAGE  
The year and month of when restrictions were  
put on driver's license 144

#### QUESTIONS MARKED FOR RULINGS

PAGE	LINE
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16 (Pages 168 to 171)



CERTIFICATE

STATE OF NEW YORK )  
: SS.:  
COUNTY OF QUEENS )

I, LORRAINE DeSALVIO, a Notary Public  
for and within the State of New York, do hereby  
certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that  
such examination is a true record of the  
testimony given by that witness.

I further certify that I am not related  
to any of the parties to this action by blood  
or by marriage and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 20th day of January, 2008.

  
LORRAINE DeSALVIO